IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3749 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SURJITSINGH HARISINGH PANJABI

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 3749 of 2001

MR NM KAPADIA for Petitioner No. 1

MR K.T.DAVE, AGP for Respondents No. 1-3

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 09/10/2001

ORAL JUDGEMENT

In exercise of powers under Section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985

('the Act' for short), Commissioner of Police, Surat City, Surat, vide order dated March 19, 2001, (Annexure-A to the petition) detained the petitioner/detenu.

2. The averments made in the petition and the grounds of detention order dated March 16, 2001 manifest that the petitioner is a prohibition bootlegger within the meaning of Section 2(b) of the Act and as four cases under the prohibition Act are registered against the petitioner which are still pending for trial. Besides this, statements of two witnesses are recorded and therefore, according to the detaining authority his activities are prejudicial to the maintenance of public order and therefore, powers under Section 9(2) of the Act were exercised by the detaining authority by not disclosing the names of the witnesses and accordingly detained the petitioner/detenu.

3. By filing this petition under Article 226 of the Constitution, the petitioner has assailed the impugned order of detention on various grounds and prayed to issue a writ of habeas corpus or any other appropriate writ or order quashing and setting aside the impugned order of detention and setting him at liberty forthwith.

4. The petitioner has challenged the order of detention on various grounds. Mr. N.M.Kapadia, learned advocate for the petitioner has restricted his arguments to the effect that subjective satisfaction recorded by the detaining authority under Section 9(2) of the Act cannot be considered as genuine. In order to substantiate his arguments he contended that the detaining authority has not supplied the relevant papers i.e. the report of the chemical analyzer though demanded by the petitioner/detenu, and on this ground alone this petition deserves to be allowed as the right of the petitioner to make an effective representation as enshrined in Article 22(5) of the Constitution is infringed. He has further contended that privilege claimed under Section 9(2) of the Act for not disclosing the identities of the witnesses is not genuine in the absence of reply affidavit filed by the detaining authority. He, therefore, urged to allow the petition and prayed to set the petitioner at liberty forthwith.

5. Mr. K.T.Dave, learned AGP appeared on behalf of the respondent State. He, however, does not dispute the factual aspect about non-supply of the report of the chemical analyzer to the petitioner/detenu by the detaining authority, though demanded by the petitioner/detenu. He, therefore, urged to pass

appropriate order in the light of settled principles enunciated by this Court.

6. I have considered the submissions advanced by the learned advocates appearing for the parties. I have also perused the averments made in the petition as well as the documents annexed therewith and the impugned order.

7. A similar question arose before the Division Bench of this Court in the case of RAMABHAI VAGRI VS. COMMISSIONER OF POLICE, AHMEDABAD CITY AND OTHERS, 1994 (2) GLH- UJ 5. In the said case this Court has held that non-furnishing the panchnama and the chemical analyzer report inspite of specific demand has caused prejudice to the petitioner and, therefore, continued detention is held illegal.

8. Applying the facts of the aforesaid case to the facts of the present case, at the cost of repetition be it stated that in the present case also the petitioner though demanded the report of the chemical analyzer was not supplied to him and therefore, continued detention of the petitioner/detenu has become illegal which has caused serious prejudice to the petitioner in making an effective representation to the detaining authority and thereby violative of constitutional safeguard enshrined in Article 22(5) of the Constitution.

9. Besides this, the privilege claimed under Section 9(2) of the Act also cannot be called genuine in the absence of reply affidavit filed on behalf of the detaining authority and therefore, on the aforesaid two grounds order of detention is vitiated and the petition deserves to be allowed.

10. Seen in the above context, the detention order is vulnerable, bad in the eyes of law and therefore liable to be quashed and set aside by allowing the petition.

11. For the foregoing reasons, petition succeeds and is accordingly allowed. The impugned order of detention dated March 19, 2001 is hereby quashed and set aside. The petitioner/detenu is ordered to be set at liberty forthwith if not required in connection with any other case. Rule is made absolute. No order as to costs. Direct service is permitted.

(A.M.Kapadia, J)

Jayanti*